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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

STEFFANIE G. WADDINGTON
DAN A. WHITE
THOMAS M. MAGILL
DONALD G. WALKER
ERWIN MILTON JESSE BORK, III
WARREN T. GEORGE

Group Art Unit: 3627

Examiner: CUFF, Michael A.

Atty. Dkt. No.: 11867.0003.NPUS00
(MKSS:003)

Serial No.: 09/867,814

Filed: MAY 30, 2001

For: DISTRIBUTION SYSTEM

RESPONSE TO OCTOBER 18, 2005 MAILING

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents

P.O. Box 1450

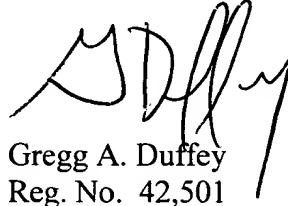
Alexandria, Virginia 22313-1450

Pursuant to the telemessages between the undersigned and Examiner Cuff, Assignee hereby submits the original and two copies of the Appeal Brief, having a listing for an evidence Appendix and related proceedings Appendix (listing 'none') pursuant to the Examiner's request.

No fees are believed to be associated with filing this response; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason, the Commissioner is authorized to deduct said fees from Deposit Account No. 01-2508/11867.0003.NPUS00.

Date: November 15, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Duffey", is written over the printed name and title.

Gregg A. Duffey
Reg. No. 42,501
Attorney for Assignee

HOWREY LLP
1111 Louisiana, 25th Floor
Houston, TX 77002-5242
713.787.1400



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PATENT

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APPEAL BRIEF

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Assignee of the above-referenced application hereby submits an original and two copies of this Appeal Brief to the Board of Patent Appeals and Interferences, in support of the Notice of Appeal filed February 25, 2005 and received at the U.S. Patent and Trademark Office March 3, 2005, and in reply to the Notification mailed October 18, 2005. The due date for filing this Appeal Brief is November 18, 2005. The Commissioner is hereby authorized to deduct any and all required fees relating to the enclosed materials from Deposit Account No. 01-2508/11867.0001.000000.

I. REAL PARTY IN INTEREST

As Assignee of the above-referenced patent application, McKesson Corporation, of One Post Street, San Francisco, California, a corporation of the State of Delaware, is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other pending appeals or interferences of applications related to the above-referenced application.

III. STATUS OF THE CLAIMS

Claims 17-62 are pending in the present application. Claims 17-60 were expressly rejected in the Final Office Action dated December 1, 2004; claims 61 and 62 were not acted upon or addressed in the Final Office Action, and for the purposes of appeal only, these claims will be addressed in the sections describing the finally-rejected claims 17-60. Original claims 1-16 were restricted on September 12, 2002, were cancelled, and are being pursued in co-pending application no. 10/243,246.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection in this case.

V. SUMMARY OF THE INVENTION

The present invention is set forth in the claims; certain specific embodiments are described in the specification. Generally speaking, and without prejudice to the scope of the claims, the present invention relates to a method for distributing a plurality of items, placed in a shipping unit, to a customer. In a particular embodiment, the method includes creating an

electronic shipment record, which associates each item placed within the shipping unit with the shipping unit. *See* Original Specification at 5-6, claims 17-20. The electronic shipment record is sent to the customer independent of the shipping unit. *Id.* By using the shipment record, the items within the shipping unit are identified when as received by the customer, and thus may be verified independently or reconciled. *Id.* In this way, human error is minimized and the distribution method is improved. *Id.* at 4.

In other aspects, the claimed invention includes generating a warning if any discrepancy exists between the items to be delivered and the delivered items. *Id.* at Original claim 37.

VI. ISSUES ON APPEAL

One issue is presented on appeal:

- A. Whether claims 17-62 are patentable under 35 U.S.C. § 103(a) over Southam in view of Reber et al.

VII. GROUPING OF THE CLAIMS

Claims 17-62 stand or fall together on the rejections based on 35 U.S.C. § 103(a).

VIII. ARGUMENT

- A. **Claims 17-62 Are Patentable Under 35 U.S.C. § 103(a) Over Southam in view of Reber et al. because the references fail to disclose, teach, or suggest at least the step of independently identifying of the *contents* of the shipping unit via a shipment record.**

Assignee respectfully disagrees with the characterization in the Final Office Action of Southam and Reber, and contends that these references fall short of disclosing the limitations of the listed claims, when properly viewed as a whole. Therefore, Assignee will first to point out the claimed invention as a whole compared to the disclosure of the prior art of record.

Claim 17 is directed to a method of distributing a plurality of items to a customer. *See* claim 17 as previously presented (Appendix). Items destined for the customer are placed into a

shipping unit, and a label having a unique identifier is placed on said shipping unit. An electronic shipment record is created that identifies the shipping unit by the identifier and listing the items within the shipping unit. The shipment record associates the identifier with the items within the shipping unit. The electronic shipment record is sent to the customer, and the shipping unit is delivered to the customer. The customer then reads the identifier on the label; and *independently identifies* the items within the shipping unit by *using the electronic shipment record* received by the customer. *Id.*

In stark contrast to claim 17, (and as even the Final Office Action admits) Southam fails to disclose, teach, or suggest many limitations of the pending claims, and that “Southam shows a simple computer facilitated product selling system where the product (shipping unit) is shipped (delivered) to the consumer (shipping unit received.)” Final Office Action at 2.

Southam discloses:

An apparatus and system for allowing customers to purchase boutique or specialty items directly from a supplier or wholesaler. The items for purchase are those conventionally available only through retailers such as local boutiques or specialty shops. An example would be salon quality hair care products. The system allows a customer to visit a website on a computer network, such as the Internet, and place an order for the product by providing information on which products are desired for purchase, the mailing address to which the products are to be sent, payment type, and optionally selecting a local retailer the customer enjoys frequenting to which the profits are to be directed. The supplier then processes the order and sends the customer the desired products, charging the customer normal retail prices. The supplier protects its business relationships with the local retailer by crediting the retailer for some or all of the profit the retailer normally would have received had it made the sale of the product. The recipient retailer is either chosen by using the retailer selected by the customer during the ordering process or, if a retailer was not chosen, by determining that product-carrying boutique which is geographically closest to the mailing address given by the customer.

Southam Abstract.

Further, Southam provides:

The instant invention comprises a **system which allows a customer**, or end product user as used herein, **to purchase a product**, normally available only through retailers such as

boutiques or specialty stores and not generally sold in department, grocery stores, or mass merchandisers, **directly from a supplier using an electronic communications path** or link, preferably a computer network. Alternatively, the link could be a telephone line, coaxial cable, fiber optic cable, or any state of the art medium over which electronic data may be sent. The customer uses a remote input device such as a computer to access the network, preferably the Internet, and visits the supplier's website. If the customer does not have access to a computer, it is envisioned that the customer contact an order entry site comprising an order entry person with a computer having access to the website. The website gives the customer a choice of products from which the customer designates those desired for purchase. The customer is then directed to provide the address to which the product is to be sent and a payment method. The customer is also given the option to select a third party retailer or store from a provided list to which the predetermined profits of the sale will be sent. The customer should choose the store from which the customer would have purchased the product had this system not been used. If the customer chooses not to select a store, the store geographically closest to the provided mailing address will be chosen automatically by the computer. After the customer has provided all of the necessary information, the customer would hit a "send" button or its equivalent, on the website which would send the order information to a central processing unit. The central processing unit is linked in electronic communication flow to at least one remote output device, preferably a computer. It is envisioned that there are remote output devices located at each supply site, such as a factory, warehouse, or wholesaler, a remote output device used for billing purposes, and a remote output device used for crediting the third party retailers for the sales of the products.

Southam at 2:12-46 (emphasis added).

The order data is received by the supplier's computer and triggers an order processing chain of events. The information is sent to a data bank such as a hard disk drive, random access memory or other magnetic or optical data storage device where the products ordered are noted for inventory and stock replacement purposes. The corresponding products are either designated as sold from a stock inventory or added to the supplier's replacement requirements. The mailing address data is sent to the shipping department of the closest supply source where the product is packaged for shipment. The supply source could be the supplier's factory or main warehouse or one of a number of distribution sources at different locations, such as regional warehouses or distributors. The accounting department receives the data in order to bill the customer and credit the designated store. The marketing department may also access the information for demographic purposes.

Id. at 2:47-63 (emphasis added).

Per Southam:

After receiving confirmation at step 66, the consumer will receive the product at step 68 from the distributor selected by CPU 22, delivered via the shipment method chosen at step 62. Finally, at step 70, the consumer will receive a bill for the order. If the payment method chosen at step 64 was a credit card or similar credit arrangement, consumer will receive an invoice or receipt showing that the account was charged for the purchase.

Receipt of a bill or receipt at step 70 can occur before, with, or after receipt of the product at step 68.

Id. at 6:21-29.

Thus, in Southam, no shipment record (as required by claim 17) is sent to the customer such that upon receipt, the customer may identify the contents of the shipping unit independently; nor is an identifier on the shipping unit disclosed, taught, or suggested in Southam. Further, even if an identifier such as a barcode were provided, a user of the Southam disclosure could not identify the contents within the shipping container upon receipt. Nor could the user verify the contents by consulting the claimed "shipment record," as no shipment record is disclosed, taught, or suggested therein.

U.S. Patent No. 6,081,827 to Motorola ("Reber") does not correct these deficiencies of Southam.

Reber discloses "[a] network navigation method includes steps of reading machine-readable data (14) associated with an article of mail (12), and determining an electronic address (20) based upon the machine-readable data (14)." Reber Abstract. Further:

The present invention provides a method which comprises receiving an article of mail physically delivered from a sender to a recipient by a delivery service. The article of mail has a bar code which uniquely identifies the article of mail to the delivery service. The method further comprises reading the bar code after the recipient receives the article of mail. The bar code is read by the recipient using a bar code reader. An **electronic address of the sender** of the article of mail is determined based upon at least a portion of the bar code read by the recipient using the bar code reader, and a message is communicated to the electronic address of the sender.

Reber, Summary of Invention 1:65-2:10 (emphasis added).

Reber provides:

The present invention further provides a system comprising a translation device, a terminal, a bar code reader, and a digital computing device. **The terminal is for preparing an article of mail for delivery by a delivery service from a sender to a recipient.** The article of mail is prepared to include a bar code which uniquely identifies the article of mail to the delivery service. The terminal is further for communicating bar code data encoded by the bar code and an electronic address of the sender to the

translation device. **The bar code reader is usable by the recipient to read the bar code from the article of mail after the delivery service has physically transported the article of mail to the recipient.** The digital computing device cooperates with the bar code reader and the translation device to retrieve the electronic address based upon at least a portion of the bar code read from the article of mail using the bar code reader. The digital computing device further **communicates a message to the electronic address of the sender.**

The present invention still further provides a database comprising a computer-readable medium which stores first bar code data, a first electronic address associated with the first bar code data, second bar code data, and a second electronic address associated with the second bar code data. The first bar code data uniquely identifies a first article of mail physically delivered from a first sender to a recipient at a destination address. The first electronic address is associated with the first sender.

Id. at 2:11 – 2:41 (emphasis added).

Thus, Reber discloses a system in which an article of mail is delivered to an end user. The end user may then decode the machine-readable data 14, *e.g.* by using a scanner, to determine the **destination address** of the sender of the article of mail. The network may automatically contact the sender via email, etc. “Embodiments of the present invention advantageously provide methods and systems for automatically navigating an electronic network to a destination [e.g. the sender’s electronic address] associated with an article of mail. An end user can navigate to the destination using the article of mail without necessarily knowing the electronic address for the destination. As a result, the electronic address and the format for the electronic address become more transparent to the end user.” *Id.* at 2:65-3:6.

Only **after** the recipient scans the barcode is the sender contacted: the identity of the contents are not identified even after scanning the barcode. In the present invention of claim 17, the recipient may independently determine the content of the shipping unit via the shipment record, without contacting the sender. Thus, the scanning in Reber cannot perform the identification of the item’s contents, as claimed in independent claim 17.

After determining the electronic address 20 from the machine-readable data 14, the network access apparatus 22 can perform any combination of: linking to the electronic address 20, communicating a message to the electronic address 20, and receiving data

from the electronic address 20. By linking to the electronic address 20, the end user 24 can link to a Web page or an online document associated with either the content of the article of mail 12, the sender of the article of mail 12, the deliverer of the article of mail 12, or an advertiser associated with the article of mail 12, for example. By communicating a message to the electronic address 20, the end user 24 can acknowledge receipt of the article of mail 12 to either the sender or the deliverer of the article of mail 12, for example, or can electronically reply to the article of mail 12. By receiving data from the electronic address 20, the end user 24 can receive either an electronic form of information printed in the article of mail 12, information that supplements or augments the information in the article of mail 12, or delivery information, for example.

The steps of linking, communicating a message, and/or receiving data can be performed to facilitate a transaction. For example, the end user 24 can purchase an item, pay a bill, pay taxes, vote in an election, renew a driver's license, renew an automobile registration, make ticket reservations, or purchase a sample of a video or a movie, upon receiving the article of mail 12.

Id. at 7:16-42.

The Final Office Action states that a “[t]he registration number and the transaction identifier are associated to the label on the shipping unit and *the items within the shipping unit.*”

Final Office Action at 2- 3 (emphasis added). Assignee respectfully disagrees. Reber actually states:

Examples of the article of mail 12 include, but are not limited to post cards, letters, items within envelopes, publications, packages, and parcels. The article of mail 12 can be physically delivered by a postal service such as the United States Postal Service (USPS), by a parcel service or courier service such as Federal Express and United Parcel Service, or by another delivery service.

Id. at 3:22-28. However, itemization of contents of the article of mail are not disclosed, taught, or suggested. As disclosed in Reber:

Associated with the article of mail 12 are machine-readable data 14, and optionally, a human-readable image 16. The machine-readable data 14 is used to navigate to a destination of the electronic network 10 such as an electronic address 20. The optional human-readable image 16 is associated with either the electronic address 20 or a means for navigating to the electronic address 20.

Id. at 3:29-34.

Preferably, the machine-readable data 14 includes data associated with the delivery of the article of mail 12. In this case, the data can assist in the delivery of the article of mail 12, or can identify the article of mail 12, for example.

Id. at 51-55.

In an exemplary embodiment, the machine-readable data 14 includes information-based indicia such as the information-based indicia proposed by the United States Postal Service. In this case, the machine-readable data 14 includes a destination address, a return address, a registration number, a transaction identifier, and a postage license associated with the article of mail 12. The aforementioned information is encoded using a printed code that includes a two-dimensional bar code.

Id at 56-64.

Thus, in Reber, the customer may scan the barcode on the article of mail only to determine the sender's electronic address, but not to determine the contents of the article of mail. After the barcode is scanned, the electronic address of the sender may be ascertained and communication may be established. Nothing in Reber teaches, discloses, or suggests that the customer may identify the *contents within* an article of mail 12 (i.e. determine the items within the shipping unit of claim 17 by consulting a shipment record) by scanning the bar code.

Rather, Reber, as explained above, teaches that the customer first scans the article delivered, then establishes communication via an electronic address of the sender. When the article is first scanned by the customer, the contents therein are unknown. Only the information that is present in the indicia (e.g. the article of mail, but not its contents) could be ascertained by the customer.

Thus, Southam and Reber fail to disclose, teach, or suggest each of the limitations of independent claim 17, as previously presented. As such, neither Reber nor Southam, alone or in combination, as properly understood, disclose, teach, or suggest at least the limitations discussed above of independent claim 17. As such, it is believed claim 17 is in condition for allowance.

Claim 17 was analyzed above in the interest of clarity as an exemplary independent claim. However, it is noted that independent claims 26, 41, and 51 also include a similar limitation to that discussed above with respect to claim 17: that the items within the container or shipping unit may be identified by reading the identifier or barcode thereon by using the shipment record. *See, e.g.*, claim 26 ("sending the electronic shipment record to said remote site

....wherein said remote site receiving said shipping unit and creates an electronic delivery record, using said electronic shipment record, of said items delivered at said remote site”); claim 41 (“using the shipment and invoice data by the customer electronically reading the container identifier on the label of the container to identify the delivered container and the items in the container from the shipment and invoice data”); and claim 51 (“creating an electronic receipt, of the items in the container, in the customer database when receiving the container delivered...and reconciling the items packed in the delivered container with the items on the electronic invoice [shipment record] in the customer database”). For the reasons set forth with respect to claim 17, it is believed independent claims 26, 41 and 51, and claims dependent directly or indirectly thereon, are also in condition for allowance.

Each of the remaining claims are dependent, directly or indirectly, from independent claims 17, 26, 41 or 51. As such, each is believed that all pending claims are in condition for allowance.

1. Claims 18, 19, 21, 26, 31, 36, 37, 42, 43, 51, 57, 58, and 59, and claims dependent therefrom, additionally are patentable under 35 U.S.C. § 103(a) over Southam in view of Reber et al. at least because the references of record fail to disclose, teach, or suggest at least the additional steps of *verifying/reconciling the contents* of the container with the shipment record, and/or *identifying a discrepancy* between the items shipped and the step of independently identifying of the *contents* of the shipping unit via a shipment record.

Claims 18, 19, 21, 26, 31, 36, 37, 42, 43, 51, 57, 58, and 59 contain additional elements not found in the cited references: that the method includes verifying the contents within the shipping unit by using the shipment record; or that the method includes recoding a discrepancy between the contents of the shipping unit and the shipment record; or that the method includes the step of electronically reconciling the items in the shipping unit with the items on the shipment record. *See, e.g.*, claim 18 (“verifying contents of said shipping unit using said listing

of said items within said shipping unit in said electronic shipment record”); claim 19 (“recording any discrepancy between said contents of said shipping unit and said listing in said electronic shipment record”); claim 21 (“listing any differences between said items listed on said electronic shipment record and said items within said container”); claim 26 (“identifying any differences between said shipping quantity and said delivered quantity”); claim 31 (“verifying said contents of said shipping unit comprises electronically reading said identifier on said label and electronically comparing said reading of said identifier on said label to said electronic shipment record”); claim 36 (“generating a warning if any discrepancy exists between the items to be delivered and the delivered items”); claim 37 (“wherein the step of delivery further includes verifying that the items being delivered to the customer correspond to the items delivered to the customer”); claim 42 (“generating a warning signal if a discrepancy exists between the times delivered and the items ordered”); claim 43 (electronically recording any discrepancy between the items shipped in the container and the items ordered contained on the shipment and invoice data”); claim 51 (“electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database”); claims 57 and 58 (“electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database further comprises the steps of . . .”); and claim 59 (“generating a warning if a discrepancy exists”).

The Final Office Action at 3 simply concludes: “The examiner believes that looking at label on a package and matching the data with a received electronic invoice is a means for independently identifying and verifying that one received the right package.” Final Office Action at 3. This rejection is improper.

First, this type of manual comparison is the type of manual “verification” (as opposed to

the claimed independent identification and verification/reconciliation using the separate shipment record, not the item itself) is expressly the type of manual operation, which may cause the very problems the invention is directed toward minimizing. For instance, when describing the problems the invention is directed at addressing, the Original Specification notes:

An additional shortcoming of the conventional ordering process is employee error. The clerk may enter the wrong identification numbers or quantity for the item. This error requires that the shipping units be returned to the distribution center. . . . Thus, there is a need for a distribution system that reduces the amount of paper, reduces the possibility of error, reduces the review of the delivery by the receiving agents, and simplify the ordering process.

Original Specification at 4.

The claimed invention thus overcomes this manual identification and comparison by automatically verifying/reconciling the items received, via a comparison to the shipment record. *See, e.g.*, Original Specification at 44 (“To reduce errors in the receiving process, the retail device 300 provides a warning if a scanned item from the delivery does not match any of the item on the purchase order. If the scanned barcode does not match any ordered item [i.e. by comparing the reading to the shipment record], a warning beep sounds and the item will not appear on the top line of the ‘item’ list box 358 of the receiving screen 342. The item in the container may have been incorrectly placed in the container by the distribution center 12. To fix this discrepancy, the receiving agent uses a “Returns” option on the home page 340 as will be described below.”); *see also id.* at 45 (“The receiving procedures for the distribution system of the present invention provide significant advantages. The retail device 300 increases the productivity and accuracy of the receiving agent receiving the delivered items. The retail device 300 allows the deliveries to be quickly reviewed and validated.”).

Second, even the conclusion of the Final Office Action that “verifying that one received the right package” is not the required limitation of the claims. As detailed above, it is the

independent verification/reconciliation of the *contents* of the shipping unit (or reporting a discrepancy therebetween) using the shipment record, which is one of the novel, nonobvious features of the claimed invention.

None of the claimed steps of verifying, reconciling, or recording a discrepancy using the shipment record required of claims 18, 19, 21, 26, 31, 36, 37, 42, 43, 51, 57, 58, and 59 is disclosed, taught, or suggested in the prior art of record. Further, the Final Office Action fails to specifically address these novel, nonobvious limitations of the dependent claims. As such, each of the claims discussed immediately above, and claims dependent therefrom, are believed to be in condition for allowance for this additional reason.

2. Claims 26, 33, 37, and 61 are patentable under 35 U.S.C. § 103(a) over Southam in view of Reber et al. additionally because the references fail to disclose, teach, or suggest at least the sequential steps expressly recited in these claims.

The Final Office Action at 3 states “Applicant is reading limitations into sequential events, which are not claimed.” However, it is noted that at least claims 26, 33, 37, and 61 each specifically, expressly require sequential steps for performing the claimed method. *See, e.g.*, claim 26 (“sending the electronic shipment record to said remote site prior to delivery of said items”); claim 33 (“wherein said shipment record is created prior to said delivery of said shipping unit to said customer”); claim 37 (“verifying that the items being delivered to the customer correspond to the items delivered to the customer, prior to the receiving by the customer”); and claim 61 (“in which the step of identifying the shipping unit further comprises using the electronic shipment record received prior to delivering the shipping unit to the customer”). Thus, the conclusory statement found in the Final Office Action is incorrect; further, as each of the references of record fails to disclose such sequential limitations, it is believed claims 26, 33, 37, and 61, and claims directly or indirectly dependent thereon, are

allowable for this additional reason.

3. Claims 28, 40, 36, 48, 50, 51, 57 and 59 are patentable under 35 U.S.C. § 103(a) over Southam in view of Reber et al. because the references fail to disclose, teach, or suggest the additional limitations found in these claims.

The Final Office Action fails to specifically address the additional claimed features found in various other independent and dependent claims. Each and every limitation must be disclosed, taught, or suggested, in the prior art for a proper rejection to stand.

Pending claims include additional limitations not disclosed, taught, or suggested by the prior art of record. *See, e.g.*, claim 28 (providing delivery information for said shipping unit to a delivery device from a distribution center computer system...and verifying that said shipping unit has been properly loaded into said delivery vehicle by electronically reading said identifier"); claim 30 ("uploading said delivery record"); claim 36 ("generating a warning"); claim 48 ("returning at least one item by generating a return list"); claim 50 ("selecting a preload option on a distribution device"); claim 51 ("creating an electronic receipt"); claim 53 ("recording delivery of the container"); claim 57 ("recalling the item identifiers in the electronic invoice on the customer database") and claim 59 ("generating a warning"). It is noted that the preceding listed claims are exemplary only; each pending claim is believed to be in condition for allowance.

Assignee highlighted these novel, nonobvious features in tabular form for the convenience of the PTO, in its August 17, 2004 Response. However, the Final Office Action applied impermissible hindsight in generally rejecting claims including additional claimed features not discussed above. . Indeed, rather than applying prior art to these claimed limitations, the Final Office Action concludes: "Applicant has submitted a list of limitations on page 19 of the response. The examiner request[s] [sic] that applicant objectively look at these limitation[s] [sic] to decide if they are not inherent features of e-commerce and common sense

business.” As such, it is believed such a statement is not a proper “rejection”, especially in light of the fact that the limitations, represented below, are not in the prior art of record. Further, “inherent features of e-commerce and common sense business” referred to in the Final Office Action must be viewed at the time of the filing of the provisional application, upon which priority is claimed (i.e. May 31, 2000), and not as of the mailing of the Office Action. It is noted that no such prior art references have been cited for the proposition that the limitations highlighted above are “inherent features of e-commerce and common sense business” as of the May 31, 2000 priority date of the present application. Further, it is noted that it is the PTO province, not that of the Assignee, to provide grounds for rejecting each claim, claims which Assignee believes are in condition for allowance.

As at least the listed limitations of claims 28, 40, 36, 48, 50, 51, 57 and 59 are not disclosed, taught, or suggested in the prior art of record, it is believed that each of claims 28, 40, 36, 48, 50, 51, 57 and 59, and claims dependent therefrom, directly or indirectly, are believed to be allowable at least for this additional reason.

4. Claims 61 and 62 are patentable under 35 U.S.C. § 103(a) over Southam in view of Reber et al.

In the Response dated August 17, 2004, Assignee presented two new claims 61 and 62, authorizing the PTO to charge any fees associated with the filing of the Response. Claims 61 and 62 are dependent from claim 17, believed to be allowable as discussed above. Further, claim 61 in particular adds the limitation that the use of the shipment record to identify the shipping unit is received prior to the delivery of the shipping unit to the customer. Thus, for this additional reason, claim 61 specifically rebutting the conclusion of the Final Office Action that “sequential events” are “not claimed.” Final Office Action at 3, “Response to Argument.” Claim 62 adds the limitation that the receipt of the plurality of items is acknowledged by

“electronically reading” the identifier on the label of the shipping unit, which is not disclosed, taught, or suggested by the prior art as described above. At least for these additional reasons, it is believed claims 61 and 62 are in condition for allowance.

VIII. CONCLUSION

The rejection of claims 17-60 should be reversed and all pending claims 17-62 passed to issue.

Respectfully submitted,



Gregg A. Duffey
Reg. No. 42,501
Attorney for Assignee

HOWREY LLP
1111 Louisiana
Houston, Texas 77002
P: 713.787.1478
F: 713.787.1440

Date: November 15, 2005

CLAIMS APPENDIX: PENDING CLAIMS

1-16. (cancelled)

17. (previously presented) A method for distributing a plurality of items to a customer comprising the steps of:

placing said items destined for said customer into a shipping unit;
placing a label on said shipping unit, said label having a unique identifier;
creating an electronic shipment record identifying said shipping unit by said identifier and listing said items within said shipping unit, the electronic shipment record associating the identifier with the items within the shipping unit;
sending said electronic shipment record to said customer;
delivering said shipping unit to said customer;
receiving said shipping unit by said customer;
reading the identifier on the label; and
independently identifying the items within the shipping unit using the electronic shipment record received by the customer.

18. (previously presented) The method of claim 17 wherein receiving said shipping unit by said customer further includes verifying contents of said shipping unit using said listing of said items within said shipping unit in said electronic shipment record.

19. (previously presented) The method of claim 18 wherein verifying the contents of said shipping unit using said listing of said items within said shipping unit in said electronic shipment record further includes electronically recording any discrepancy between said contents of said shipping unit and said listing in said electronic shipment record.

20. (previously presented) The method of claim 17 wherein receiving said shipping unit by said customer further includes creating a delivery record of said delivery, said delivery record created by electronically reading said identifier.

21. (previously presented) The method of claim 18 wherein receiving said shipping unit by said customer further includes creating a receipt record of said receipt of said shipping unit, said receipt record created by identifying said shipping unit and listing any differences between said items listed on said electronic shipment record and said items within said container.

22. (original) The method of claim 17 wherein said unique identifier is a barcode.

23. (previously presented) The method of claim 17 wherein receiving said shipping unit by

said customer further includes storing said shipment record on a portable computer prior to receiving said shipping unit.

24. (previously presented) The method of claim 17 wherein delivering said shipping unit to said customer further includes electronically capturing a signature confirming delivery of said shipping unit to said customer.

25. (previously presented) The method of claim 17 wherein delivering said shipping unit to said customer further includes electronically recording a time of delivery of said shipping unit to said customer.

26. (previously presented) A method of distributing a plurality of items from a warehouse to a remote site comprising the steps of:

- creating an electronic shipment record of said items to be delivered to said remote site,
- said shipment record listing a shipping quantity of each of said items;
- sending the electronic shipment record to said remote site prior to delivery of said items;
- and

- delivering said items at said remote site;

- wherein said remote site receives said shipping unit and creates an electronic delivery record, using said electronic shipment record, of said items delivered at said remote site, said delivery record listing a delivered quantity of each of said items and identifying any differences between said shipping quantity and said delivered quantity.

27. (previously presented) The method of claim 17 wherein delivering said shipping unit to said customer further comprises the step of using said identifier on said label to ascertain electronically the location of said shipping unit.

28. (previously presented) The method of claim 17 wherein delivering said shipping unit to said customer further comprises the steps of:

- providing delivery information for said shipping unit to a delivery device from a distribution center computer system;

- loading said shipping unit into a delivery vehicle; and

- verifying that said shipping unit has been properly loaded into said delivery vehicle by electronically reading said identifier on said label with said delivery device.

29. (previously presented) The method of claim 28 further comprising the step of creating a

delivery record by electronically reading said identifier on said label after said delivering of said shipping unit to said customer.

30. (previously presented) The method of claim 29 further comprising the step of uploading said delivery record to said distribution center computer system.

31. (previously presented) The method of claim 18 wherein the step of sending said electronic shipment record to said customer comprises downloading by said customer of said electronic shipment record from a distribution center computer system.

32. (previously presented) The method of claim 31 wherein the step of verifying said contents of said shipping unit comprises electronically reading said identifier on said label and electronically comparing said reading of said identifier on said label to said electronic shipment record.

33. (previously presented) The method of claim 32 wherein said electronic shipment record is created prior to said delivering of said shipping unit to said customer.

34. (previously presented) The method of claim 17 wherein the step of identifying said shipping unit further comprises identifying said shipping unit and the items therein by said customer using said electronic shipment record.

35. (previously presented) The method of claim 34 further comprising verifying the contents of the shipping unit by electronically reading a second identifier on at least one item, the second identifier uniquely identifying the item.

36. (previously presented) The method of claim 35, wherein the step of verifying further includes generating a warning if any discrepancy exists between the items to be delivered and the delivered items.

37. (previously presented) The method of claim 36, wherein the step of delivering further includes verifying that the items being delivered to the customer correspond to the items delivered to the customer, prior to the receiving by the customer.

38. (previously presented) The method of claim 37, wherein the step of verifying further includes verifying the contents of the shipping unit by electronically reading a second identifier on at least one item, the second identifier uniquely identifying the item.

39. (previously presented) The method of claim 26 further comprising the step of inputting orders for said items into a distribution center computer system, wherein said shipment record is created from order information entered into said distribution center computer system prior to said

delivery of said items to said remote site.

40. (previously presented) The method of claim 39 further comprising the step of providing said electronic delivery record to said distribution center computer system.

41. (previously presented) A method for distributing a plurality of items to a customer comprising the steps of:

- submitting an order to a distribution center by the customer for the items to be delivered;
- placing the ordered items into a container, each item having an item identifier to uniquely identify each item;
- placing a label on the container, the label having a unique container identifier;
- delivering the container to the customer;
- sending shipment and invoice data containing the items shipped and ordered to the customer; and
- receiving the container by said customer;
- using the shipment and invoice data by the customer electronically reading the container identifier on the label of the container to identify the delivered container and the items in the container from the shipment and invoice data;
- determining the items received by identifying the items in the container by electronically reading the item identifier on each item; and,
- reconciling the items received with the items on the shipment and invoice data.

42. (previously presented) The method of 41 further comprising generating a warning signal if a discrepancy exists between the items delivered and the items ordered.

43. (previously presented) The method of claim 42 further including electronically recording any discrepancy between the items shipped in the container and the items ordered contained on the shipment and invoice data.

44. (previously presented) The method of claim 43 further including creating a delivery record of the delivery, the delivery record created by electronically reading container identifier.

45. (previously presented) The method of claim 44 wherein each of the container identifier and the item identifier is a barcode.

46. (previously presented) The method of claim 45 further including electronically recording a time of delivery of the container to the customer.

47. (previously presented) The method of claim 41, wherein the step of submitting an order

further comprises:

- scanning a barcode of the items to be ordered; and
 - selecting a quantity for each item ordered.
48. (previously presented) The method of claim 47 further comprising:
- returning at least one item by generating a return list by scanning the item to be returned
 - and associating the item with a quantity to be returned; and
 - sending the returns list to a distribution center, the orders being originally received at the distribution center.
49. (previously presented) The method of claim 48 further comprising:
- creating a retail record which associates the item with a price of the item;
 - electronically identifying the item;
 - modifying the price of the item; and
 - transferring the retail record to the distribution center.
50. (previously presented) The method of claim 49 further comprising selecting a preload option on a distribution device wherein the container barcode is electronically identified as the container is loaded onto a transport device thereby verifying that the container and the items therein are loaded onto the transport device.
51. (previously presented) A method of distributing a plurality of items from a distributor to a customer, the distributor having a distribution database, the customer having a customer database, the items having item identifiers and being shipped in a container having a container identifier, the method comprising the steps of:
- creating an electronic invoice in the distribution database by electronically associating the item identifiers on the items with the container identifier on the container in which the items are packed;
 - sending the electronic invoice from the distribution database to the customer database;
 - creating an electronic receipt, of the items in the container, in the customer database when receiving the container delivered to the customer with the packed items; and
 - electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database.
52. (previously presented) The method of claim 51, further comprising the step of sending the electronic receipt from the customer database to the distribution database.

53. (previously presented) The method of claim 51, further comprising the step of recording delivery of the container to the customer in the distribution database.
54. (previously presented) The method of claim 51, wherein sending the electronic invoice from the distribution database to the customer database comprises the step of sending the electronic invoice via an electronic medium.
55. (previously presented) The method of claim 54, wherein sending the electronic invoice from the distribution database to the customer database comprises the step of sending the electronic invoice via the Internet.
56. (previously presented) The method of claim 51, wherein creating the electronic receipt in the customer database when receiving the container delivered to the customer with the packed items comprises the step of electronically reading the container identifier on the container.
57. (previously presented) The method of claim 51, wherein electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database further comprises the steps of:
- recalling the item identifiers in the electronic invoice on the customer database;
 - reading the item identifiers on the packed items; and
 - marking the read items as received on the electronic invoice in the customer database.
58. (previously presented) The method of claim 51, wherein electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database further comprises the step of reconciling a first record in the customer database having the items received by the customer with a second record in the customer database having items ordered by the customer.
59. (previously presented) The method of claim 51, wherein electronically reconciling the items packed in the delivered container with the items on the electronic invoice in the customer database further comprises the step of generating a warning if a discrepancy exists between the received container or packed item and the container or item stored in the electronic invoice in the customer database.
60. (previously presented) The method of claim 51, further comprising the steps of creating an electronic order in the customer database containing a plurality of ordered items and sending the electronic order from the customer database to the distribution database.
61. (previously presented) The method of claim 17 in which the step of identifying the

shipping unit further comprises using the electronic shipment record received prior to delivering the shipping unit to the customer.

62. (previously presented) The method of claim 17 further comprising acknowledging the receipt of the plurality of items in the shipping unit by electronically reading the identifier on the label of the shipping unit.

EVIDENCE APPENDIX

(NONE)

RELATED PROCEEDINGS APPENDIX

(NONE)